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OFFICE OF
INSURANCE COMMISSIONER
B U L L E T I N

No. 79-3

August 6, 1979

Subject: IMPROPER USE OF DRIVING RECORDS

The Washington State Department of Licensing has informed us that a number of insurance companies have unlawfully obtained the personal driving records of individuals and used such records in underwriting the commercial insurance of the individuals' employers. An investigation is underway by that Department.

It appears that insurers writing vehicle insurance in our state need to review the laws pertaining to their use of driving records. The principal statutes are part of the Motor Vehicle laws, not the Insurance Code, so they may have been missed.

Since 1977, the case record on each driver licensed under the laws of our state must be maintained by the Department of Licensing in two parts. One part is the employment driving record, which includes all motor vehicle accidents in which the person is involved while driving a commercial motor vehicle as an employee of another and all convictions of the person for violation of the motor vehicle laws while the person is driving a commercial motor vehicle as an employee of another. The other part--the non-employment record--includes all other accidents and convictions.

RCW 46.52.130 specifies who may obtain the driving record abstracts and how they may be used. Its highlights follow:

1. Any request for a certified abstract must specify which part is requested and only it will be furnished.
2. The employment driving record part will be furnished only to:
 - The individual named in the abstract,
 - An employer,
 - The insurance carrier that has insurance in effect covering such employer, or
 - A prospective employer.
3. The other part (the personal or non-employment part) will be furnished only to:
 - The individual named in the abstract,
 - The insurance carrier that has insurance in effect covering such named individual, or
 - The insurance carrier to which the named individual has applied.

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4. The abstract furnished to an insurance company will exclude certain information relative to occupational driver's licenses and relative to incidents involving law enforcement officers and fire fighters.

5. An insurance company or its agent receiving a certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information therein contained to a third party.

6. No insurance policy shall be cancelled on the basis of such information unless the policyholder was determined to be at fault.

7. "No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles shall use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment."

8. An employer or prospective employer receiving a certified abstract shall use it exclusively for his own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information therein contained to a third party.

9. A violation of the statute is a gross misdemeanor.

We understand that there have been instances where an insurance company has obtained and used the non-employment part of the driver's record for purposes of underwriting an employer's commercial vehicle insurance. In one case we are told that the insurer substantially increased the employer's commercial insurance premium by virtue of the employee's personal driving record. As a result, the employee was discharged. Such conduct by an insurer is forbidden by the law.

Another statute that is pertinent is RCW 48.30.310, which is part of the Insurance Code. It states:

When an individual applies for a policy of casualty insurance providing either automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage on an individually owned passenger vehicle or a renewal of such policy, an insurer shall not consider the applicant's commercial motor vehicle employment driving record in determining whether the policy will be issued or renewed or in determining the rates for the policy. An insurer shall not cancel such policy or dis-criminate in regard to other terms or conditions of the policy based upon the applicant's commercial motor vehicle employment driving record.

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"Employment driving record" means that record maintained by the director pertaining to motor vehicle accidents or convictions for violation of motor vehicle laws while the applicant is driving a commercial motor vehicle as an employee of another.

Based on who may receive the abstracts and the restrictions on their use, we think the basic policy established by the legislature is that an employee's non-employment driving record may not be used for underwriting an employer's commercial vehicle insurance. Similarly, an employee's employment driving record may not be used for underwriting the employee's personal vehicle insurance.

The penalties for violating these laws are severe. Aside from the criminal sanctions, certificates of authority and licenses could be revoked or suspended, and a violation that results in damage to an individual could undoubtedly lay the foundation for a "bad faith" action or an action for the recovery of damages. Every insurer should make certain that its underwriters and agents understand and obey these laws.

DICK MARQUARDT
Insurance Commissioner